

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition of Sandwich Isles Communications, Inc. for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611, and 69.2(hh) of the Commission's Rules)	CC Docket No. 96-45
)	
)	DA 05-105
)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the proceeding on the Sandwich Isles Communications, Inc. (Sandwich Isles) Petition requesting a study area definition waiver.¹ OPASTCO is a national trade association representing more than 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37). The founding of Sandwich Isles² is a modern parallel to the establishment of

¹*Pleading Cycle Established for Comments Sandwich Isles Communications, Inc. Seeks Waiver Nunc Pro Tunc of the Definition of "Study Area" in Part 36 and Sections 36.611 and 69.2(hh) of the Commission's Rules*, CC Docket No. 96-45, Public Notice, DA 05-105 (rel. Jan. 18, 2005).

² *Petition of Sandwich Isles Communication, Inc. for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611, and 69.2(hh) of the Commission's Rules*, CC Docket No. 96-45, pp. 2-5 (fil. Dec. 27, 2005) (Petition).

OPASTCO's older members. Like them, Sandwich Isles was created to serve consumers in places that were too challenging to serve and/or insufficiently lucrative to attract the attention of larger providers.

The facts in this case demonstrate that Sandwich Isles' Petition should be granted. Re-establishing Sandwich Isles' study area would ensure its ability to receive high-cost support based on its own costs and enable it to continue providing high-quality service to its customers at affordable rates.

II. COMMENTS

Sandwich Isles' Petition notes that years after the Common Carrier Bureau established its study area, the Commission reversed this decision and concluded that "the exchanges served by Sandwich Isles were within the GTE (now Verizon) study areas."³ However, the Petition highlights that the only basis for this determination was that in 1997, GTE was designated as an eligible telecommunications carrier (ETC) "for the state of Hawaii" by that state's public utility commission.⁴ The Petition correctly points out that because ETC designations are not exclusive, and are issued to multiple carriers, they cannot be the sole basis upon which to determine the definition of a study area.⁵

Nonetheless, the Commission has determined that Sandwich Isles must apply for a study area definition waiver in order to receive universal service support as an ILEC.⁶ The Petition conclusively demonstrates that the Commission's three-prong test for

³ Petition, p. 11.

⁴ *Ibid* (citations omitted).

⁵ *Id.* In addition, GTE did not receive, nor did it seek, the permission needed to serve customers in most of Sandwich Isles' service area from the appropriate regulatory body. *Id.*, p. 10.

⁶ *GTE Hawaiian Telephone Company, Inc. Application for Review of a Decision by the Common Carrier Bureau; Sandwich Isles Communications, Inc., Petition for Waiver of Section 36.611 and Request for Clarification*, AAD 97-82, Memorandum Opinion and Order, 19 FCC Rcd 22268 (2004).

granting a waiver to a study area definition has been met in this instance.⁷ First, the impact on the high-cost program will be negligible.⁸ For the near term, 2005 projections show an impact of under four-tenths of one percent. Going forward, as the number of customers served by Sandwich Isles grows, the cost per subscriber will decline, further minimizing the impact on the Fund.⁹

Second, there is no objection to the study area waiver from the relevant state regulatory bodies. Sandwich Isles has the consent of the Hawaii Public Utilities Commission, as well as the Department of Hawaiian Home Lands (DHHL), which also regulates its activities.¹⁰

Lastly, the support of the DHHL demonstrates that a waiver would serve the public interest, thus meeting the third prong. As the DHHL explains:

The provision of modern, reliable telecommunications infrastructure and services is important to our mission to rehabilitate our beneficiaries. These services impact quality of life – health, education, personal safety; and serve as a platform for economic development. Prior to issuing [Sandwich Isles] the license, there were many beneficiaries living on HHL that did not have phone service due to the high cost either they or DHHL would have to pay to install the infrastructure. Today these beneficiaries enjoy the same service that is available in urban areas. Additionally, [Sandwich Isles] is now investing tens of millions of dollars to pay for the

⁷ Petition, pp. 17 - 22. The three conditions for a study area waiver set by the Commission are: (1) the change in study area boundaries must not adversely affect the Universal Service Fund; (2) no state commission having regulatory authority over the transferred exchanges opposes the transfer; and (3) the transfer must be in the public interest. *See, e.g., U S WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772 (1995) (PTI/Eagle Order).*

⁸ The Commission has determined that impacts of less than one percent of the total high cost fund for the pertinent funding year do not adversely affect the Universal Service Fund. *See PTI/Eagle Order, 10 FCC Rcd at 1774, paras. 14-17.*

⁹ Petition, pp. 17 - 18.

¹⁰ *Id.*, p. 18.

communications infrastructure in the areas DHHL is currently developing.¹¹

Thus, Sandwich Isles' receipt of high-cost support based upon its own costs results in precisely the kinds of benefits for consumers that Congress envisioned in section 254 of the Telecommunications Act of 1996. Were the Commission to deny Sandwich Isles' Petition for a study area definition waiver, it would disrupt infrastructure investment and the availability of affordable service in a previously unserved area, contrary to the very goals of section 254. Therefore, the Commission should grant the Petition and reestablish the Sandwich Isles study area.¹²

III. CONCLUSION

Because the Commission incorrectly determined that Sandwich Isles' service area fell within the GTE/Verizon study area, the Commission should reestablish Sandwich Isles' study area without delay. Furthermore, Sandwich Isles has conclusively demonstrated that the study area definition waiver it requests will not adversely affect the Universal Service Fund, has not generated any objection from the appropriate regulatory bodies, and will clearly serve the public interest. Therefore, OPASTCO urges the Commission to grant the requested study area definition waiver as expeditiously as possible.

¹¹ *Id.*, Appendix D, Letter from Micah A. Kane, Chairman, Hawaiian Homes Commission, Department of Hawaiian Home Lands, to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission (fil. Dec. 23, 2004).

¹² Like Sandwich Isles, OPASTCO makes this request without prejudice to the position that since the GTE/Verizon study area did not previously include the Hawaiian Home Lands, a waiver should not be necessary. *See Id.*, pp. 1 - 13.

Respectfully submitted,

**THE ORGANIZATION FOR THE
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February 8, 2005

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail, on this, the 8th day of February, 2005, to those listed on the attached list.

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SERVICE LIST

**CC Docket No. 96-45
DA 05-105**

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